82-371

IN THE SUPREME COURT OF THE UNITES STATES

OCTOBER TERM, 1982

CASE _____

Office - Supreme Court, U.S.
FILED
AUG 18 1982
ALEXANDER L. STEVAS,
CLERK

SYLVIA BEHAR

PETITIONER

VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
ESTATE OF ALBERTO BEHAR.

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO
U.S.COURT OF APPEALS, ELEVENTH
CIRCUIT

SYLVIA BEHAR.
PETITIONER
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QUESTION PRESENTED FOR REVIEW

WHETHER A DISMISSAL OF CAUSE INVOLVING A FRAUD RESULTING IN DEPRIVATION OF PROPERTY AND TAX EVASION TO U.S. GOVERNMENT USING PETITIONER'S NAME IS IN VIOLATION OF HER CIVIL AND CONSTI_ TUTIONAL RIGHTS OF DUE PROCESS OF LAW.

OPINIONS BELOW

On June 14,1982 a Judgement was entered in the U.S.Court of Appeals,Eleventh Circuit it is hereby to be reviewed and is reprinted in Appendix B.

JURISDICTION

The Case to be reviewed is a Civil Case wherein Petitioner's Civil and Constitutional rights were violated resulting in deprivation of property and Evasion of Estate Taxes using Petitioner's name.

The Jurisdiction of the Supreme Court is invoked under U.S.C. 28. Sec.1257;26 U.S.C.1701-1707, Rule of Sup.Ct.17 a).28 U.S.C.Sec.1343.

CONSTITUTIONAL PROVISION INVOLVED

U.S.Const. Amend. V and XIV. " No person shall be deprived of Life, Liberty or Property without Due Process of Law. "

STATEMENT OF THE CASE AND FACTS

Petitioner has been litigating for her rights since husband's demise on January 1979 exhausting all remedies available to her limited knowledge, in Federal and State Courts without any results.

The Case originated in a Divorce Proceeding wherein Trial Judge granted a Divorce on September 1978 postponing property Settlement , being fully aware Petitioner's 80 years old husband was critically ill, acting irrational.

Trial Judge erred not continuing the Case, at Petitioner's request or reserving Jurisdiction to charge against the Estate the awards of 20 years of marriage.

Husband died before any hearing for Property Settlement took place.

The Order of Dissolution was appealed to the Sup.Court of Florida, Petitioner dismissed Appeal by signing an Agreement in the Trial Court involving One Million Dollars. Petitioner was unrepresented by Counsel because of her poor financial situation.

Petitioner is a Latin Woman born in Cuba, her command of the English language was limited, she did not comprehend the Terms of the Agreement involving a Fraud, reposing all her Trust and confidence in the Trial Judge who assured her all Awards were Correct and Total.

On March 1981. Petitioner filed a Complaint in the Federal Court pursuant to Federal Rule of Civil Procedure 9b) for Rescission of Deed in the Family Home of a market value of Six Hundred Thousands Dollars ($600.000.00 and Punitive Damages for Two Hundred Thousands Dollars ($200.000.00.

A Motion to Produce Documents was filed on

April 3, 1981 among documents filed it appeared in the Estate of ALBERTO BEHAR that Petitioner would receive from the Settlement $286,378.00. and it is a false misrepresentation.

A Motion to Stay Proceedings pursuant to Rule of Fed.Civil Procedure #62 was filed by Petitioner on September 17, 1981. Motion denied on September 25, 1981.

On September 30, 1981 an Interlocutory Appeal was timely filed in the U.S.Court of Appeals to the Order denying the Stay.

COMPLAINT was dismissed on October 2,1981 for not filing Pre-trial Stipulations; Case appealed to U.S.Court of Appeals on October 28, 1981. Both Appeals were consolidated under Case #81-6104. Appeal dismissed without opinion on June 14,1982 in the U.S.Court of Appeals, Eleventh Circuit (Appendix B).

REASONS FOR GRANTING THE WRIT

Petitioner's Civil and Constitutional Rights of Due Process have been violated in both State and Federal Courts, resulting in deprivation of Property(XIV Amend.U.S.Const.) it has so far departed from the accepted usual course of Judicial proceedings or so far sanctioned such a departure by a lower Court as to call for an exercise of this Court's power or supervision .(Sup.Court Rule 17 a).

Petitioner signed a Property Settlement in the Trial Court unrepresented by Counsel, pursuant to this Agreement PETITIONER would receive the Family Home worth $600.000.00, it was evaluated on 1979 in $200.000.00 and $150.000.00 in Cash Money, held presently in the Probate Court.

Petitioner did not have money for Attorneys Fees, her rights for equal protection mandated by the Constitution were violated.

Petitioner's command of the English language was limited and did not comprehend the Fraud in the Agreement involving One Million Dollars and the jurisdictional issue surrounding the Case, that is, lack of Jurisdiction of Trial Court after husband's demise. (emphasis added).

Petitioner reposed all her Trust and confidence in the Trial Judge who assured her all the Awards were Correct and Total.Civil Rights Title 28 Sec.1343.

The Agreement is a Constructive Fraud(Federal Rule of Civil Procedure 9 b). The hearing was a sham. Not appropriate for the nature of the Case. Mullane V.Central Hannover Trust Co. 70 Sup.Ct.652. The hearing must be granted in meaningful manner. Armstrong V.Manzo 85 Sup. Court.1187.

If Petitioner would have known the truth she would not have signed the Agreement or dismiss the Appeal to the Order of Dissolution of marriage.

Petitioner was deprived of her Property without Due Process of Law. 1st. Element of Due Process. Liberty or Property involved. 2nd. Deprivation of Property. 3rd. State action 4. Governmental interest.Craig V.Carson 449 F.Supp.385.

Petitioner filed in the Federal Court a Complaint requesting Equitable Relief by a Rescission of Deed and $200.000.00 in Punitive Damages. Petitioner filed in above mentioned Case a Motion To Produce Documents and in Estate Tax Forms it appears that Attorney for Respondent willfully and feloniously states Petitioner will receive $286,378.00 from the Agreement signed in the Trial Court. It is false, it is a fraudulent return prepared by Attorney DAVID BERG,THe Attorney for Respond who is specialized in Estate Taxes, therefore he has knowledge of the truth. It was done with intention of evading a

large amount of money in Estate Taxes to the U.S.Government, using the Petitioner's Name, he also prepared the Agreement to defraud the Petitioner in a conspiracy with Paul Tabio, Petitioner's nephew who lured his aunt to sign The Agreement alleging it was for her best interest. It has been proven behond any reasonable doubt that Respondent acted with evil intention willfully filing fraudulent return to evade Taxes to U.S.Government. Title 26-Sec. 7201-7207.

Fundamental Percept in the Administration of Justice in the Federal Court is that accused be tried and convicted according to legal proceeding. Forman V.U.S.261 F.2d.181. Wilson V. U.S.250 F.2d.312. Hoover F.U.S.77S.Ct.62; Taylor V.U.S.179.F.2d. 312.

Evasion of Taxes is a Federal question not presented in other State actions by Petitioner.

Petitioner contends that Res Judicata is to be applied in State Courts if it does not present a Federal question. Petitioner's Case does present a Federal question protected by the Constitution.

Petitioner invokes the Doctrine of Equitable Estoppel to be applied to her Case as affirmative Defense. Contrary to Res Judicata that derives from Roman Law, to put an end to litigations, Estoppel is part of the American Jurisprudence to grant Equitable Relief.

" Lack of knowledge or means of knowledge as to facts in question, reliance in good faith upon conduct or statement of party to be estopped, action based therein such as to change position of party claiming estoppel to his injury. "

Statute of Limitations does not bar to bring this Cause to Court within Three to Six Years Limit. (Title 26 Sec.6531).

A Dismissal of Case in the Federal Court for not filing Pre Trial Stipulations is a big prejudice and unfair ruling. Petitioner entered an Appeal to the Order denying Stay proceeding and considered there was an automatic Stay after the Appeal to U.S.Court of Appeals Rule of Appellate Procedure #18.

Petitioner informed the Federal Court there was a legitimate reason for granting Stay because there were Two Appeals pending in higher Courts with concurrent points of law.

A Dismissal of Cause in both Courts will result in a big triumph to Attorneys for the Respondent, who will control One Million Dollars in a Trust for incompetent son, locked liked a prisoner in a State Mental Hospital.

Petitioner will be on welfare and without a family home. Respondent should not profit from his own wrong.

U.S.Constitution protect our families and its preservation, in this Case, the Petitioner and her sick son are suffering phisically and financially as a consequence of these decisions in Federal and State Courts.

Petitioner requests from that Honorable Court to review the Case pursuant to Rule 17 taking in consideration that all rulings in Federal and State Courts, Miami Division are prejudicial and against Petitioner's best interest.

Petitioner came from Cuba on October 1960 to this great country of Law and Justice, ironically what Fidel Castro respects in Cuba , that is, family home and son's custody, Petitioner is losing in The Unites States.

C O N C L U S I O N

In view of the importance of facts, consequences and foregoing reasons , Petitioner submits that a Writ of Certiorari should issue to review the Judgement of the U.S.Court of Appeal Eleventh Circuit.

Petitioner prays for Justice to The U. S. Supreme Court their decision is crucial for the Petitioner and her sick son.

Respectfully
submitted by: Sylvia Behar
SYLVIA BEHAR.
PETITIONER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true Copy of the Document was mailed to:DAVID BERG,ESQ.1110 Brickell Ave.Miami.Florida

Auqust 30 , 1982

Sylvia Behar
SYLVIA BEHAR.
PETITIONER.
45 E.Rivo Alto Drive.
Miami Beach, Florida.
33139.

IN THE SUPREME COURT OF THE UNITED STATES

SYLVIA BEHAR

PETITIONER

VS.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR.

RESPONDENT.

APPENDIX

SYLVIA BEHAR.
PETITIONER.

BY:SYLVIA BEHAR.
PETITIONER.
45 E.Rivo Alto Drive.
Miami Beach,Florida,33139.-

IN THE UNITED STATES DISTRICT COURT
OF FLORIDA MIAMI DIVISION.

CASE NO.81-498.CIV.

SYLVIA BEHAR

PLAINTIFF

V.

SOUTHEAST BANK TRUST CO.N.A.
Personal Representative of the
Estate of ALBERTO BEHAR.

COMPLAINT

DEFENDANT

PLAINTIFF , for its complaint says and alleges:

1. PLAINTIFF is a citizen of the United States and a resident of the State of Florida. The amount involved in this action is in excess of $10,000.00 exclusive of interest and costs.

2. PLAINTIFF signed in proper person a Property Settlement agreement(attached hereto as Exhibit 1)on November 21, 1979, the amount involved is in excess is in excess of One Million Dollars.

APPENDIX A

3. PLAINTIFF was lured to sign this Agreement by her nephew attorney PAUL TABIO, presently living in Tampa, Florida , who stated she will receive Half a Million Dollars.

Thereafter he said she will get little money and added. " I have the power to lock you in an Institution all your life, as your incompetent son George Behar. He is 19 years old emotionally disturbed and has been locked in a State Mental Hospital for over a year.

PLAINTIFF is not allowed to visit her son at the Hospital.

4. PLAINTIFF has no money to pay Attorneys Fees to defend her Constitutional rights(U.S. Const.Amend.VI). PLAINTIFF is a latin woman born in Cuba, her command of the English language is limited. according to some attorneys consulted PLAINTIFF is surrounded by thieves and bandits, who tricked her taking advantage of her naivete and ignorance to sign that

agreement against her best interest.

It is a Fraud, possible deprivation of Property(U.S.Const.Amend.XIV). These attorneys consulted did not want to enter in the Case.

5. PLAINTIFF filed a Motion for Clarification in both Trial Court and Probate Court. The Courts did not clarify if there is a jurisdictional issue or adverse legality in the terms of the agreement and conveyance of the marital residence of a market value in excess of $350,000.00, or if the Personal Representative Deed, PLAINTIFF received conveys full title of said Property as stipulated in open Court.

DEFENDANT is possibly not only trying to defraud PLAINTIFF but also the U.S.Government in Federal and State Taxes. taking advantage of the marital deduction.

WHEREFORE PLAINTIFF requests from that

Court to have Judgement entered against the DEFENDANT in the amount of $200.000.00 for Pu_ nitive damages for hindering, delaying, trying to commit Fraud; this has caused PLAINTIFF Deep anxieties and a General Special Deed for sole ownership of the Property as stipulated in the Agreement in open Court.

PLAINTIFF also requests protection of the Court from any action deriving from relatives and attorneys for DEFENDANT that could deprive PLAINTIFF of her Liberty in an action that could affect her civil and constitutional rights in a combination to control a large fortune.

SIGNED AND SEALED this 6th day of March 1981

Sylvia Behar

SYLVIA BEHAR.
PLAINTIFF
45 E.Rivo Alto Drive.
Miami Beach, Florida.33139

UNITED STATES DISTRIST COURT
SOUTHERN DISTRICT OF FLORIDA

SYLVIA BEHAR.

CASE NO.81-498-civ.

V

SOUTHEAST BANK TRUST CO.N.A
Personal Representative of
The ESTATE

ORDER OF
DISMISSAL

This action came on before the Court sua ponte appearing that no pre-trial stipulation was filed on the fifth day prior to the pre-trial conference as required by the time schedule contained in the Court's Order setting pre-trial conference. The Court having considered the record and being fully advised in the premises it is hereby

ORDERED AND ADJUDGED that the above-styled action be and the same is hereby dismissed without prejudice to the right to refile and re-serve upon payment of the necessary fees.

DONE AND ORDERED in Chambers at Miami, Florida, October 2nd.1981.

(S)

JAMES LAWRENCE KING.
UNITED STATES DISTRICT JUDGE.

IN THE UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 81-6104

SYLVIA BEHAR.
PLAINTIFF_APPELLANT

VERSUS

SOUTHEAST BANK TRUST CO.
Personal Representative of
Estate of ALBERTO BEHAR.
Deceased.
DEFENDANT_APPELLEE

Appeal from the United States District Court for the Southern District of Florida.

Before TJOFLAT, FAY and HENDERSON, Circuit Judges.

By the Court:

The Motion of Appellee to dismiss the Appeal is granted.

U.S.Court of Appeals
ELEVENTH CIRCUIT.

FILED
June 14,1982

NORMAN E.ZOLLER
CLERK

APPENDIX B